

Ombudsman's Determination

Applicant	Mr G
Scheme	Inbucon Ltd retirement Benefit Scheme (the Scheme)
Respondents	Aon Hewitt Standard Life Assurance Limited (SL)

Outcome

1. I do not uphold Mr G's complaint and no further action is required by Aon Hewitt and SL.

Complaint summary

2. Mr G's complaint is that he has not been paid the pension he considers he is due as a result of his employment with Associated Industrial Consultants Ltd (part of the Inbucon Group).

Background information, including submissions from the parties

3. Mr G says he was employed by Associated Industrial Consultants Ltd (**AIC**) from 1965. He then transferred to the Inbucon Group sometime in 1969/1970, when he ceased to work for AIC in the UK and moved abroad. Mr G says he left the Inbucon Group in 1971.
4. Mr G says that during his employment with AIC he contributed to the Scheme.
5. In 1999, the Scheme was wound up and the Trustee of the Scheme arranged for the members benefits to be bought out with SL. This meant that SL was then responsible for paying a pension equal to the benefits that were due from the Scheme directly to each member. This is known as a "buy-out".
6. As part of the buy-out process the Trustee would have provided SL with full details of any pension due to the members of the Scheme. Once the buy-out was completed all pensioners and deferred members of the Scheme then became policyholders with SL.

7. On 8 May 2001, the Trustee wrote to each of the members and explained that the Scheme had been wound up and that the Trustee's role had come to an end. The Trustee also said that future correspondence should be sent to SL as the benefits from the Scheme would now be paid by SL. It said Aon Hewitt, the previous Scheme administrator, would retain the files for any future queries.
8. In 2012, Mr G attempted to find out what had happened to the pension he believed he had accrued whilst working for AIC. The Pensions Tracing Service directed him to the previous Scheme administrator, Aon Hewitt.
9. On 21 August 2014, following an enquiry from Mr G, Aon Hewitt confirmed to Mr G that the Scheme had been wound up and the pension benefits for the Scheme were now with SL. It provided Mr G with the contact details for SL.
10. On 24 August 2014, Mr G contacted SL requesting the payment of his pension.
11. On 2 September 2014, SL confirmed to Mr G that it could not locate any pension for him on its system and that he was not part of the Scheme buy-out.
12. On 17 November 2015, following an enquiry from Mr G, HMRC wrote to him confirming his employment history. Its records showed he had commenced employment with AIC in the 1965/1966 tax year and had been employed each year until the 1969/1970 tax year. HMRC stated that it held no employment history for him from the 1970/1971 tax year onward. The letter also said:

“Unfortunately we cannot supply exact dates of employment. Prior to 6 April 1975 National Insurance (NI) contributions were submitted by means of a stamped card and subsequently recorded clerically on the NI record, these cases showed no details of the employer.

Employer's details are only held from 5 April 1961, when the graduated pension scheme commenced and employers were required to submit deduction documents to the department. In some cases where there was no liability for graduated contributions a document would not be submitted for that tax year and therefore no details would be available.”
13. In March 2016, Mr G contacted SL and Aon Hewitt again regarding his pension benefits.
14. On 5 April 2016, Aon Hewitt confirmed to Mr G that it no longer administered the Scheme, and it did not hold any pension entitlement for him.
15. On 28 May 2016, SL confirmed it had completed an “extensive” search of its records and no benefits for him could be found.
16. On 30 June 2016, following another enquiry from Mr G, SL confirmed to him that it had taken over responsibility for the Scheme through the buy-out. SL also explained that as part of the buy-out process it had been passed details of all the eligible Scheme members and their corresponding benefit entitlements by the Trustee of the

Scheme. SL said it had checked its records and no pension benefits had ever been held for him. SL said it could not tell him the reason for this, and he should contact Aon Hewitt for further information. It also explained that if he was a member of a company scheme for less than 5 years during the time in question then there was a chance the contributions were refunded when he left the Scheme.

17. In June 2016, Mr G replied to SL and said:-

- As he had already provided documentary evidence from HMRC that he was an employee of AIC, he could only conclude that his pension entitlement had been “misappropriated”.
- His period of employment was more than five years but even if the contributions had been repaid there should be documentary evidence to prove this payment.
- He wanted to be provided with the contact details of the Trustees.
- He had provided SL with a list of people who were members at the same time he was employed by AIC and asked if they were members in the Scheme.

18. On 18 August 2016, SL provided details of the adviser that was involved in the buy-out of the Scheme and the names of the Trustee in office at the time. It explained it could not provide further details of other members of the Scheme, as this would be a data breach.

19. On 9 November 2016, Mr G complained to Aon Hewitt about the time it had taken to respond to him. He said that the letter sent by the Trustee in 2001 said Aon Hewitt would “keep” Scheme members files so it could answer any queries. Mr G felt that he had already provided proof that he was employed by AIC, so Aon Hewitt and the Trustees had the “legal obligation” to keep records of his employment and pension details. He wanted to know what had happened to his pension.

20. On 24 January 2017, Aon Hewitt wrote to Mr G and apologised for the delay in replying and said:-

- Prior to 1975 when the Social Security Act 1973 was introduced, early leavers of occupational pension Scheme had no statutory right to any accrued benefits.
- According to HMRC’s letter dated 17 November 2015, Mr G’s employment dates demonstrated why there was no record of a pension entitlement. It said:

“It is likely you would have received a refund of any personal contributions except for those paid in respect of contracting out of the Graduated Pension Scheme (**GPS**), the forerunner of the State Earnings Related Pension Scheme (SERPS). Members of the GPS had to have a minimum level preserved as a consequence of contracting-out, which was known as an Equivalent Pension Benefit (**EPB**).

If you had been entitled to an EPB benefit you would have received a Certificate of Assurance when you left the Scheme.”

- It could not investigate matters further unless Mr G could provide some form of documentary evidence, such as a Preserved Benefit Statement or Certificate of Assurance in respect of the EPB.
- It explained that any other documents such as payslips, P60s or pension statements prior to the date of leaving would not constitute proof of any entitlement to a pension or EPB.

21. Mr G remained unhappy and referred his complaint to my Office. As part of his submissions, Mr G provided documents relating to his wife’s pension entitlement in a different scheme from the 1960s. He said that he expected Aon Hewitt to have similar documents to demonstrate what had happened to his pension.

Adjudicator’s Opinion

22. Mr G’s complaint was considered by one of our Adjudicators who concluded that no further action was required by SL and Aon Hewitt. The Adjudicator’s findings are summarised below:-

- Both SL and Aon Hewitt had no records to show Mr G was entitled to a pension from the Scheme when it was wound up.
- When the Scheme was wound up in 1999, the Trustee provided SL with the name and details of all the eligible Scheme members and their pension entitlements from the Scheme. Mr G was not included. The Adjudicator found that this was because Mr G was not entitled to a pension from the Scheme at that time.
- Considering that Mr G left employment with AIC 50 years ago, and the Scheme was wound up in 1999, the lack of documentation did not amount to maladministration.
- If Mr G had no pension entitlement it was not unreasonable that Aon Hewitt did not hold any paperwork in relation to his employment so long after it ceased.
- Mr G had provided a copy of a letter from HMRC which explained that because of the nature of how information was recorded in the 1960s it was unable to provide further accurate data about the employment dates or details of any GPS information. Mr G considered that this was proof of his Scheme entitlement. However, the Adjudicator considered that HMRC’s letter only demonstrated that he was employed by AIC between 1965 and 1970. It did not indicate he was a member of the Scheme at the time or confirm any pension entitlement.
- The Adjudicator was also mindful of the legislation in force during the time Mr G was employed by AIC. The Social Security Act 1973 (**the Act**) introduced the right for an early leaver of a pension scheme to receive preserved benefits. Mr G left

the employment before the Act formerly came into effect in 1975. The Adjudicator considered it was more likely than not that if Mr G had been a member of the Scheme, he would have received a refund of contributions when he left AIC's employment.

- The onus was on Mr G to show that he was entitled to a pension from the Scheme, but he had not been able to present any information to show that he was entitled to a pension from the Scheme.

23. Mr G did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.

24. Mr G has made further comments which do not change the outcome. Mr G has provided details of his work history and in summary said:-

- The Adjudicator, Aon Hewitt and SL, have not produced a single document to substantiate their statements.
- Based on the information supplied by HMRC, the Adjudicator should have accepted that he was an employee of AIC. He knows he was a member of the Scheme as he would not have deprived himself or his family of benefitting from a pension. If he had not joined the Scheme, then he would expect Aon Hewitt to provide a copy of a letter to demonstrate this.
- Aon Hewitt and SL have a moral and legal responsibility to safeguard the pension funds entrusted to them and it is unacceptable that the Scheme records have not been maintained.
- He has provided documents his wife received about her pension from a different scheme in relation to her employment in the 1960's. He expected similar documents to be produced by Aon Hewitt to demonstrate what happened to his pension. There should be ample documentary evidence where "every penny" with the Scheme went.
- The Trustee did not have his address and Aon Hewitt forgot to tell him it held all the details and information relating to the Scheme.
- He was unlikely to have received a refund of pension contributions when he left the Scheme, as he was abroad with no connection to, or bank account in, the UK.
- He has provided a list of 14 of his work colleagues and additional proof that another colleague had pension benefits, so this should have convinced the Adjudicator that the information provided by Aon Hewitt and SL was suspect.
- He does not accept that there had been no maladministration.
- The Adjudicator's opinion is biased in favour of Aon Hewitt and SL and has been reached without a single fact or document of proof.

- The fact that the Adjudicator did not accept the documentary evidence from HMRC that he was an employee of AIC/Inbucon infers he is a “liar” and that what Aon Hewitt has said is preferred without proof.

25. I agree with the Adjudicator’s Opinion and note the additional points raised by Mr G.

Ombudsman’s decision

26. Mr G considers he is due a pension from the Scheme and is unhappy that no documentary evidence had been provided by Aon Hewitt or SL to dispute this.
27. The letter Mr G has supplied from HMRC only demonstrates that he was employed by AIC in the 1960’s. This fact was accepted by the Adjudicator and is not in dispute. However, the letter does not demonstrate that Mr G was a member of the Scheme or has any remaining Scheme entitlement.
28. Mr G has also provided a list of 14 co-workers employed by AIC in the 1960’s. Mr G says he knows at least one person who held a pension entitlement from the Scheme. This evidence is not as conclusive as Mr G suggests. All it establishes is that other employees were members of the Scheme. It does not indicate that Mr G is entitled to a pension as a result of his membership in the Scheme.
29. Given the time that has passed since Mr G left the employment of AIC there is extremely limited documentary evidence of any kind relating to Mr G’s employment. As no definitive evidence has been provided and in the absence of the full facts, my decision regarding Mr G’s entitlement to a pension must be based on the balance of probabilities and what is more likely to have happened.
30. Aon Hewitt has said its records do not show that Mr G was entitled to a pension from the Scheme when it was wound up. SL has said the Trustee provided details of all the members pension benefits and Mr G was not included. It is more likely than not that Mr G was not included in the buy-out process because he did not have a pension entitlement in the Scheme at that time.
31. I fully appreciate that Mr G feels strongly that he is due a pension from his employment with AIC. He considers that Aon Hewitt should provide some documentary evidence to demonstrate what happened to his pension entitlement. I do not consider that the lack of documentation amounts to maladministration by Aon Hewitt. Mr G was employed more than 50 years ago, and the Scheme was wound up in 1999. If Mr G had no entitlement to pension benefits from the Scheme, there would be no requirement for Aon Hewitt to maintain records of his employment.
32. The Act introduced the right for an early leaver of a pension scheme to receive preserved benefits, but it only came into effect in 1975. Mr G left employment with AIC in 1971, before the Act was introduced. I consider it was more likely than not that he would have received a refund of contributions when he left if he had been a member of the Scheme, in keeping with standard practice before the Act came into

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effect. It is a distinct possibility that the refund of contributions was made in his last wage or salary payment and might have passed without him realising.

33. While Mr G argues that neither Aon Hewitt nor SL have provided any proof that he is not a Scheme member, the onus is on Mr G to provide evidence that he is entitled to pension benefits as a result of membership in the Scheme. I am not persuaded that Mr G has done that.
34. I do not find, on the balance of probabilities, that Mr G is entitled to a pension from the Scheme.
35. I do not uphold Mr G's complaint.

Anthony Arter

Pensions Ombudsman
21 January 2021